

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, \* Docket No. 10-CR-142

Docket No. 10-CR-142

v. \* July 25, 2011  
\* 12:04 p.m.

Buffalo, New York  
July 25, 2011  
12:04 p.m.

MARY ANNE CATALANO,

\*

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TRANSCRIPT OF SENTENCING  
BEFORE THE HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT JUDGE

14 APPEARANCES:

For the United States: PAUL J. CAMPANA, ESO.

PAUL J. CAMPANA, ESQ.

For the Defendant: RODNEY O. PERSONIUS, ESO.

Probation Officer: DAVID BALL

Court Reporter: YVONNE M. GARRISON, RPR  
Official Court Reporter  
U.S.D.C., W.D.N.Y.  
2 Niagara Square  
Buffalo, New York 14202  
716-861-7568

1                   THE CLERK: Criminal Action 2010-142A, United States  
2 versus Mary Anne Catalano, sentencing.

3                   Counsel, please state your name and the party you  
4 represent for the record.

5                   MR. CAMPANA: Paul Campana for the United States.

6                   MR. PERSONIUS: Your Honor, Rodney Personius for Mary  
7 Anne Catalano.

8                   Present also, Your Honor, just to observe today is  
9 Calvin Berry who is Ms. Catalano's attorney up in Canada.

10                  THE COURT: All right.

11                  MR. PERSONIUS: Mr. Berry here, Your Honor.

12                  MR. BERRY: Thank you.

13                  THE COURT: You may be seated at the table.

14                  MR. PERSONIUS: Thank you, Judge.

15                  THE COURT: Are we ready?

16                  MR. CAMPANA: Yes.

17                  MR. PERSONIUS: Yes, Your Honor.

18                  THE COURT: The defendant stands before the Court for  
19 a sentencing on her previous plea of guilty to one count of  
20 willfully and knowingly making a false statement in a matter  
21 within the jurisdiction of the United States in violation of  
22 Title 18 United States Code Section 1001(a) (2).

23                  I know, Mr. Personius, you've reviewed the report,  
24 and I assume you've reviewed it with your client.

25                  MR. PERSONIUS: We did, Your Honor.

1                   THE COURT: The Court accepts the terms and  
2 conditions of the plea agreement and the plea of guilty.

3                   I will now place the presentence investigation report  
4 in the record under seal. If an appeal is filed, counsel on  
5 appeal will be permitted access to the sealed report, except  
6 that counsel on appeal will not be permitted access to the  
7 recommendation section.

8                   The parties have filed the appropriate statement of  
9 parties with respect to sentencing factors. There's no dispute  
10 about the facts contained in the report. Therefore, the Court  
11 adopts these facts as its findings of fact and hereby  
12 incorporates them in the record.

13                  There are no objections to the probation officer's  
14 conclusions as to the applicable guidelines. The report  
15 recommends that the base offense level under Guideline  
16 Section 2B1.1(a) (2) is 6.

17                  The report also recommends a six-level upward  
18 adjustment pursuant to 2B1.1(b) (1) (D), and application note  
19 (3) (F) (v) (lll) in a case involving a scheme in which the goods  
20 for which regulatory approval by government agency was required  
21 but not obtained. The loss shall include the amount paid for  
22 the property, goods and services, or the goods transferred,  
23 rendered or misrepresented with no credit for the value of  
24 those items or services. Investigation via the payments for  
25 the good services and required government regulation but did

1 not receive -- exceeded 30,000 but were less than 70,000.

2                 The report also recommends a two-level downward  
3 adjustment based upon the acceptance of responsibility, and  
4 accordingly, recommends the offense level at 10, with a  
5 criminal history category of I, with an advisory guideline  
6 range of six to 12 months; an advisory range for supervised  
7 release of two to three years; an advisory range for a fine is  
8 2,000 to \$20,000, plus the cost of imprisonment and supervised  
9 release.

10                 In accordance with the Supreme Court decision U.S.  
11 versus Booker and the Second Circuit decision U.S. versus  
12 Crosby, this Court must consider the guidelines. It's not  
13 bound by them. The Court must also consider the factors in  
14 18 U.S.C. 3553(a).

15                 Now, the government has moved for a downward  
16 departure pursuant to 5K1.1 to a level 8. So the defendant's  
17 offense level is now 8, and a sentencing range of 0 to 6  
18 months.

19                 Now, Mr. Campana, the 5K motion is -- your request is  
20 under seal.

21                 MR. CAMPANA: Yes, there's an affidavit filed under  
22 seal, yes.

23                 THE COURT: Yeah. And I read it over, and it's --  
24 how long do you want this under seal? I really don't like to  
25 put things under seal unless there's a valid reason for it.

1 And I want to know how long you feel that this thing -- this  
2 affidavit should be under seal.

3 MR. CAMPANA: I think for now, Your Honor, I would  
4 expect that the Court could unseal it after Dr. Galea is  
5 sentenced which could be as soon as October 19th.

6 THE COURT: All right. So your request is it be  
7 under seal until Dr. Galea is sentenced?

8 MR. CAMPANA: Yes.

9 THE COURT: What's your position on this,  
10 Mr. Personius?

11 MR. PERSONIUS: Your Honor, I think that given the  
12 fact that the government's investigation is continuing, I think  
13 there's merit to Mr. Campana's request.

14 THE COURT: All right. Well, we'll seal it until  
15 that time and then we'll unseal it on that day.

16 MR. CAMPANA: Thank you.

17 THE COURT: Okay. We're now at -- the government's  
18 requesting a two-level departure under 5K. So we're now at  
19 level 8.

20 MR. CAMPANA: Yes.

21 THE COURT: With a sentencing range of 0 to 6 months.  
22 And the defendant is also eligible for a term of probation of  
23 one to five years.

24 I have received, I believe it's eight letters  
25 attached to your sentencing memorandum which has been filed.

1                   Mr. Personius, I'll hear from you on behalf of your  
2 client.

3                   MR. PERSONIUS: Thank you, Your Honor.

4                   Your Honor, in the submission that we filed on behalf  
5 of Ms. Catalano a week ago, we placed some emphasis on a  
6 description of the defendant made by Michelle Surace who is  
7 Mary Anne's cousin. And she described Mary Anne as a person of  
8 great integrity and commitment, and indicated that she has  
9 faced the challenges of the past two years since she was  
10 apprehended at the border back in September of 2009, with  
11 courage, dignity and grace.

12                  The reason we emphasize that in our submission and the  
13 reason I repeat it today is in the two years that I've known  
14 Mary Anne Catalano, as her attorney, I find that those words  
15 capture the essence of the Mary Anne Catalano that I've come to  
16 know.

17                  I suppose that that raises the question borrowing  
18 from an old pick up line of what's a nice girl like Mary Anne  
19 Catalano doing in a joint like this. In other words, how did  
20 she get involved in this activity with Dr. Galea.

21                  As we indicate in our papers, Your Honor, Mary Anne  
22 Catalano began working with Anthony Galea when she was 15 years  
23 old. She was excited by the opportunity. She found Dr. Galea  
24 to be a person of great charisma. And when he offered her a  
25 full-time job, that, for her, was the opportunity of a

1 lifetime.

2 As time passed and she was promoted to the position  
3 of his first assistant in or around 2007, the job became even  
4 more interesting to her. On the one hand she was working in an  
5 area that she had always enjoyed, which was athletics; she was  
6 participating in the type of work that she'd always been  
7 interested in; and it had an element of travel to it; and an  
8 association with clientele which included many professional  
9 athletes. It couldn't have been for Mary Anne more exciting,  
10 Your Honor, than it was.

11 She recognizes now that she made a grave grave error.  
12 She became infatuated with that position that she held, and she  
13 developed an overwhelming desire to earn and maintain  
14 Dr. Galea's approval.

15 That led to a --

16 THE COURT: Well, trusted him.

17 MR. PERSONIUS: She did. She did. It's not an  
18 excuse for what she did.

19 THE COURT: No, I understand.

20 MR. PERSONIUS: But she did.

21 He's a very powerful personality. She was in an area  
22 that she wanted to be in. She was enjoying what she was doing.  
23 There was a certain prominence to it because of the type of  
24 activity that was involved, but it skewed her priorities. And  
25 that has led, Your Honor, as you know, to some very devastating

1 consequences.

2 She's 33 years old. She grew up in a very strict,  
3 Catholic family with a loving mother and father and a loving  
4 brother. She's now a convicted felon, and she will be that for  
5 the rest of her life.

6 Her name will always be a footnote to a very  
7 prominent criminal prosecution, both in Canada and the United  
8 States. Her ability to travel in the future back to the United  
9 States from Canada is in doubt. We're not saying that it's not  
10 going to happen, but there's no guarantee she's going to ever  
11 be able to return to the United States.

12 This prosecution for her has had some very dire  
13 financial consequences as well. She immediately gave up the  
14 job that she had with Dr. Galea after she was apprehended, and  
15 she's had to bear the financial burden of not one, but two  
16 attorneys: Me down here in Buffalo, and Mr. Calvin Berry,  
17 who's here in court today, up in Canada.

18 Maybe most importantly through this, Mary Anne found  
19 that she bankrupted her own ideals, the ideals that she had  
20 been taught by her parents.

21 In the letter that her brother wrote to the Court, he  
22 described it as the moral and ethical lens that had been  
23 instilled in him and Mary Anne by their parents. She let down  
24 her parents, she let down her brother, she let down her friends  
25 and family, and she let down herself.

1                   And as she stands her now, Your Honor, at least what  
2 she can say, again, in the words of her cousin Michelle, is  
3 that she's dealt with all of this with a level of courage,  
4 dignity and grace.

5                   When she was apprehended at the border after  
6 initially telling the story that Dr. Galea had suggested that  
7 she tell, she made the decision on her own, without the benefit  
8 of counsel, to talk to the investigators at the border, to tell  
9 them the truth, to engage in the follow-up activities that they  
10 asked her to engage in. And she did so with great vigor, and I  
11 guess I'd say with some level of success.

12                  Since that time with the benefit of counsel, she's  
13 continued her cooperation, and it's been at an extraordinary  
14 level. I find it in my experience, Your Honor, to be unusual  
15 that the U.S. Attorney's Office in this case, acting through  
16 Mr. Campana, has gone so far as to not only recommend a  
17 downward departure, but to recommend to the Court that the  
18 sentence in this case entail a period of probation as opposed  
19 to a period of incarceration, or as opposed to not taking a  
20 position.

21                  In addition to that --

22                  THE COURT: That is very unusual.

23                  MR. PERSONIUS: Yes, it is. The most that you  
24 usually can get, Your Honor, is for the government to say, you  
25 know, we won't take a position or we won't oppose probation.

1       But Mr. Campana has been gracious enough in this case to  
2       specifically indicate that the U.S. Attorney's Office  
3       recommends that you consider a sentence of probation.

4                     THE COURT: You know, where is that?

5                     MR. PERSONIUS: It's --

6                     MR. CAMPANA: It's in our publicly filed motion.

7                     MR. PERSONIUS: I think it's --

8                     THE COURT: Okay.

9                     MR. CAMPANA: It's the last paragraph of the  
10          public --

11                    THE COURT: Not the sealed. Right. I got it.

12                    I absolutely agree with you. That is -- now, I think  
13          I've seen maybe one of these ten years ago. You don't see them  
14          very often.

15                    MR. PERSONIUS: It is unusual, Your Honor.

16                    Your Honor, immediately after being apprehended Mary  
17          Anne Catalano, as of that day that she was apprehended, she  
18          severed all ties with Anthony Galea. There was no nurturing  
19          away from that. She stopped her contact with him, her  
20          employment with him immediately.

21                    Because of how troubled she was, looking back at her  
22          behavior, she sought professional assistance to help her better  
23          understand how she got into this situation that she did.

24                    And as you can see from the seven or so letters from  
25          family, friends, clergy and her employer that we've included

1 with our submission, her acceptance of responsibility in this  
2 case is categorical and rises to the level, I think, of being  
3 extraordinary. And what Mary Anne has done as well to  
4 demonstrate her courage, dignity and grace, Your Honor, is to  
5 redouble her commitment both to her family and to her faith. I  
6 don't know that --

7 THE COURT: She made almost -- in a way, got so  
8 involved with working that she kind of like forgot about her  
9 family.

10 MR. PERSONIUS: She did.

11 THE COURT: I got that impression from reading the  
12 papers.

13 MR. PERSONIUS: I think she says that, and again,  
14 none of this excuses what she did. None of it takes away from  
15 the seriousness of her behavior, but it's all, of course,  
16 pertinent information for you to consider in the context of  
17 sentencing.

18 I can say, Your Honor, that of all the many, many  
19 defendants that I've ever represented, I don't know that I've  
20 ever had the privilege of representing somebody that was more  
21 of an exceptional human being than Mary Anne Catalano. And I  
22 commend her to you for every possible consideration you feel is  
23 appropriate to give her at the time you impose sentence.

24 Thank you, Judge.

25 THE COURT: Ms. Catalano.

1                   Are you all right, ma'am?

2                   THE DEFENDANT: I'm okay.

3                   THE COURT: Do you want take a break for a few  
4 minutes?

5                   THE DEFENDANT: No, that's okay. I can get through  
6 this.

7                   Your Honor, I take full responsibility for giving a  
8 false statement when entering the United States on  
9 September 14th, 2009. I knew what I was doing was unlawful,  
10 and I deeply regret -- I'm deeply regretful for not having used  
11 better judgement.

12                  I am aware that the consequences of my actions not  
13 only impacted my life but many people close to me, both  
14 professionally and personally.

15                  Most importantly I realize the tremendous impact and  
16 stress my decisions had on the lives of my family. The  
17 disappointment and embarrassment that I caused them I can never  
18 take away. My family has given me every opportunity to succeed  
19 in my life and they have instilled in me all the values that I  
20 required to become a successful, respectful and law-abiding  
21 adult, but my actions almost two years ago showed no reflection  
22 of their love and support.

23                  It had been their continued guidance, unfailing love  
24 and my faith that has given me the strength to get through this  
25 time and the power to better my choices in life. I guarantee

1       that I have learned a very difficult lesson regarding my  
2       priorities in life and the consequences that my actions have.

3                 I promise the Court that I will never engage in  
4       similar conduct in the future.

5                 THE COURT: Mr. Campana.

6                 MR. CAMPANA: Your Honor, Ms. Catalano's cooperation  
7       was immediate, substantial and effective. We ask the Court to  
8       impose sentence accordingly.

9                 THE COURT: You know, sometimes imposing sentences  
10      are very difficult. Probably the -- one of the most difficult  
11      things a judge does. Looking over everything here, it's  
12      unfortunate that we're -- this has happened. Because this is  
13      not a difficult sentence for me. This is a very easy sentence.

14                 Ms. Catalano cooperated almost from the get-go  
15      without a lawyer. She continued to cooperate. The remorse  
16      here is very substantial. I mean, this woman has suffered a  
17      lot for two years. She's admitted everything she did was  
18      unlawful. She apologizes to it, she's embarrassed herself, her  
19      family. And it appears to me that under all the circumstances  
20      here, a sentence of probation for one year is more than  
21      adequate to deal with this crime.

22                 As I said, this is not a difficult sentence for me.  
23      It's a very easy one. I went through and read all those  
24      letters from her church, from her family members, her friends,  
25      and I think she suffered enough. And I hope she can pick up

1 all these pieces.

2 She's obviously reunited herself with her family.

3 She got, as you say, Mr. Personius, caught up in the whole  
4 thing in dealing with well-known athletes, I guess. I guess  
5 you get caught up in that sometimes.

6 She's not a kid. She's 33-year old, but you know,  
7 sometimes you live in this little world and you don't see the  
8 big picture and so caught up in it I think sometimes we do it.  
9 We get so wrapped in what we do that we don't sometimes put  
10 things in proper perspective. This is one of the easiest  
11 sentences I ever had to impose.

12 During the period of probation she shall not commit  
13 another federal, state or local crime. Shall be prohibited  
14 from possessing a firearm or -- well, she's going to be on  
15 unsupervised release or unsupervised probation because she's a  
16 Canadian citizen, so there won't be any supervision in the  
17 United States. And, therefore, there's no indication she's  
18 ever been involved with drugs herself, and therefore, there's  
19 no drug testing required.

20 As I've said, the probation will be unsupervised  
21 since she is a Canadian citizen. I do not believe under all  
22 the circumstances and the expense that this whole thing has  
23 caused her financially -- obviously very severe -- I don't  
24 believe she has the ability to pay a fine. I'm not going to  
25 impose a fine, I'm going to waive it. However I will impose

1 the mandatory special assessment of \$100 and hope that that can  
2 be paid forthwith, Mr. Personius.

3 MR. PERSONIUS: It will be paid today.

4 THE COURT: Get it paid, get everything to probation.

5 In determining the sentence, the Court has considered  
6 the advisory range and all the points raised by counsel, as  
7 well as the government's recommendation of a probationary  
8 period has been discussed. That's very unusual the government  
9 will recommend a probationary period. But after reading the  
10 affidavit and seeing all the cooperation she's done and the  
11 remorse that's here, it's evident that a probationary period at  
12 the low end is the appropriate sentence.

13 I've also considered the factors in 18 U.S.C.  
14 3553(a), and finds that the sentence is more than sufficient,  
15 not greater than necessary to comply with the purposes of  
16 sentencing set forth under 3553(a).

17 I have granted the downward departure for the reasons  
18 that are stated in the government's papers.

19 And I believe this is a fair and just sentence under  
20 all the circumstances.

21 Ma'am, you made a terrible decision to do what you  
22 did. You paid a big price. You're going to be on federal  
23 probation for a year. It's not going to be any supervision.

24 Please do not come into the United States during that  
25 year, because that will be a violation of your probationary

1 period that will be restricted. She won't be able to return to  
2 the United States for one year. Then she'll have to get  
3 permission from the Department of Justice, I guess.

4 MR. PERSONIUS: Or Homeland Security.

5 THE COURT: Homeland Security to come back.

6 MR. PERSONIUS: Right.

7 THE COURT: That will be something she'll have to  
8 work out in the future. I have nothing to say about that.

9 MR. PERSONIUS: Your Honor, that would be subject to  
10 any further obligations she may have to the government  
11 regarding any ongoing investigation.

12 THE COURT: Right.

13 MR. CAMPANA: Yes.

14 THE COURT: Okay. Ma'am, you have a right to appeal  
15 the sentence if you feel the Court misapprehended its authority  
16 or imposed an illegal sentence. However, you did waive your  
17 right to appeal. If you feel that waiver is not a valid  
18 waiver, you may take that issue up before the Second Circuit  
19 Court of Appeals.

20 All I can tell you is that a year from now you paid  
21 your price, it's a big price. Go on with your life. You've  
22 got a lot going for you. You've got a great family, great  
23 friends, you've got a lot of people that really care about you.  
24 And I think you're going to be forever indebted to them for  
25 supporting you during this period of time.

1                   Good luck to you, ma'am.

2                   THE DEFENDANT: Thank you.

3                   THE COURT: Mr. Campana.

4                   MR. CAMPANA: There's a complaint to dismiss.

5                   THE COURT: Motion's granted.

6                   THE PROBATION OFFICER: Your Honor, we would  
7 recommend waiving the mandatory drug testing as well.

8                   THE COURT: How would you like to do that?

9                   THE PROBATION OFFICER: We waive, Your Honor.

10                  THE COURT: Since supervision is going to be in  
11 Canada.

12                  THE PROBATION OFFICER: Just for the record. For the  
13 record.

14                  THE COURT: Unless you want me to bring her back  
15 here.

16                  THE PROBATION OFFICER: No, Your Honor.

17                  THE COURT: We'll waive the drug testing.

18                  THE PROBATION OFFICER: All right, thank you.

19                  THE COURT: Anything else I should say, Mr. Ball?

20                  THE PROBATION OFFICER: No, Your Honor.

21                  THE COURT: The Court will be in recess.

22                  MR. PERSONIUS: Thank you, Judge.

23                  (Proceedings concluded at 12:25 p.m.)

24                                 \*       \*       \*

25

1 CERTIFICATION  
23 I certify that the foregoing is a correct  
4 transcription of the proceedings stenographically recorded by  
5 me in this matter.  
6  
78 S/Yvonne M. Garrison, RPR9 YVONNE M. GARRISON, RPR  
10 Official Reporter  
U.S.D.C., W.D.N.Y.  
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